IN THE SUPREME COURT OF IOWA
No. 15-1375

DONNA JEAN HOLMAN

Appellant

vs.

STATE OF IOWA

Appellee

Johnson County No. SMSM067310
Appeal from the ruling of Judge Stephen C. Gerard, II

APPLICATION FOR FURTHER REVIEW OF COURT OF APPEALS DECISION FILED OCTOBER 26, 2016 BY PETITIONER – APPELLANT DONNA HOLMAN

Donna Holman, pro se
776 Eicher
Keokuk IA 52632
Truthvan@yahoo.com
319-524-5587

Attorney General of Iowa
Hoover State Office Building
1305 E. Walnut Street
Des Moines IA 50319

CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Ethics

Constitution

Dictionary

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals decided a case that should have been retained by the Supreme Court.

2. The Court of Appeals made an error of law and ethics when it ruled, without any explanation, that only the charge against me was "before the court", while my defense, that none of the elements of the charge were met, was not!

3. The Court of Appeals erred as a matter of constitutional law when it ruled that religious and factual statements never alleged to be untrue constitute prosecutable criminal "threats".

4. The Court of Appeals erred in according the status of "protected party" to a business whose principal activity is legally recognizable as a crime.

APPLICATION FOR FURTHER REVIEW

Appellant Donna Holman applies to the Supreme Court for further review of the Court of Appeals decision filed October 26, 2016. Specific grounds for this application are as follows:

1. The Court of Appeals decided a case that should have been retained by the Supreme Court because it presents substantial issues of first impression, (Rule 6.1101(2)(c)) fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Supreme Court, and substantial questions of enunciating or changing legal principles.

This Court has not previously decided whether a statement can be prosecuted as a "threat" when it is true, or at the least, sincerely held opinion held in common with millions of Americans, and when its veracity or credibility does not depend on the existence of the speaker.

Normally Courts have no need to weigh such a matter, since Freedom of Speech is so established in America that prosecuting it is rightly foreclosed as absurd. But Freedom is tested on the

frontiers of popularity, where people most challenged by truth are the most irrational, hypocritical, and litigious, if not violent, in their suppression of it. Here is where the fence between what ought to be protected and what ought to be prosecuted is most mercilessly rammed and pushed from its posts, requiring surveyors to continually stretch it back where it belongs, for the sake of Freedom nationwide.

2. The Court of Appeals made an error of ethics and law (*Canon of Judicial Ethics* and Rule 52.10(1)(b)) when it ruled, without any explanation, that only the charge against me was "before the court", while my defense, that none of the elements of the charge were met, was not!

Any Court ruling implies that the Court has heard and considered the evidence and argument, because in America that is what we mean by "due process". It is what we expect in every case. To rule without hearing or considering the evidence and argument simply cannot be tolerated in America. Yet the impression that is exactly what was done is given by a ruling that the evidence and

argument was “not before the court”, when the charge was, and which gives not one word of explanation *why* the evidence and argument was not, or why the defense was insufficient, or even one word of acknowledgment of what the defense was, to show that it had been at least read.

3. The Court of Appeals erred as a matter of constitutional law when it ruled that religious and factual statements never alleged to be untrue constitute prosecutable criminal “threats”. Especially when my statements focused on spiritual, factual and intellectual matters and never at any time expressed any desire to harm anyone physically or on any other level. To the extent such rulings are allowed to stand, we have no First Amendment.

4. The Court of Appeals erred in letting stand the “protected party” status of a business legally recognizable as criminal, in order to protect that criminal activity from warnings about it to its victims.

STATEMENT OF THE CASE

1. Nature of the Case

This is an appeal from the January 2015 ruling of the Johnson County district court reviewing, on the merits, its November 2011 5-year extension of its November 2006 no contact order.

My appeal calls upon the Court to define the elements of Iowa Code 708.7 in a way that does not target invidious content-based restrictions of religious speech and statements of fact whose truthfulness was never challenged or said to rely on my existence.

And, based on that definition, to terminate the no-contact order against me.

But the definition itself, the declaratory relief, is the relief I need to foreclose content-based no-contact orders against me in the future, which Judge Gerard's 2015 ruling makes clear he is ready to reissue.

Declaratory relief is the *only* relief that will remain for me to ask, should this Court rule that negation of the no-contact order is

moot because (1) this Court delays ruling until it is expired and it is not renewed in Johnson County, or (2) this Court rules that the no-contact order was never legally valid – neither the original nor the extension.

The basis for such a ruling could be the following facts.

The original no-contact order, by Judge Gerard, had an "issue date" of November 2, 2006. It states, "The Court hereby finds:...the Defendant has been provided with reasonable notice and opportunity to be heard."

In fact, I received no notice of the hearing, and no opportunity to defend myself at it. The order was not even filed until November 7. I was finally served with a notice of it November 16 after I had been in jail a day for violating it; I was charged with violating it on November 15.

It is questionable whether the original 5-year no-contact order was ever legally valid, since it was issued in an ex-parte hearing which by law expires after 10 days unless the defendant is given opportunity to defend herself at a hearing, which I was not.

Even if it was, its extension at trial by Judge Edgerton is legally questionable.

First, because Judge Gerard's order had already expired by law by November 12, because it was ex-parte and there was no hearing at which I was ever allowed to defend myself against it, and it was factually erroneous in stating otherwise.

Second, even if Gerard's order were still in effect as late as the trial date January 26, extending the order for an additional five years from the trial date, making its duration five years and 85 days, has no statutory authority.

I see no authority in the Iowa Code for that, but the opposite: an explicit limitation of the period during which an order may be renewed to the 90 days prior to the expiration of the 5 years. After 5 years it can't be extended.

> 664A.8 Extension of no-contact order.
> Upon the filing of an application by the state...which is filed within ninety days prior to the expiration of a modified no-contact order, the court shall modify and extend the no-contact order for an additional period of five years....

The original November 2 order form asserts otherwise: "The

order *may* be extended prior to expiration *or at sentencing* for five years pursuant to section 708.12(2) or section 709.20(2).” However, those sections were repealed by the Iowa legislature several months before Judge Gerard signed the order, leaving 664A.8 in control.

But as if those sections of Iowa law were still in effect, on January 26, 2007, Judge Edgerton hand-wrote on the bottom of her order, “Prior no contact in place remains in effect for a period of 5 yrs from the date of this order.” Even if the law providing authority for that extra 85 days had not been repealed, how could the order “*remain* in effect” when by law it expired the previous November 12?

Even if the original no-contact order by Judge Gerard was legally valid, his extension five years later was not, for two reasons.

First, because it, too, was an ex-parte order providing me no opportunity to defend myself either at the time of the order or later.

Second, because the original order was “extended”, in 2011, 13 days after it had expired. The expiration date is the deadline by law to apply for an extension.

The original order was issued November 2, 2006. The ex-parte hearing "extending" it was held November 15.

Based on Edgerton's hand-written statement that Gerard's order "remains" in effect 5 years from her trial date, my attorney wrote on August 8, 2014, that there was no urgency justifying an ex parte hearing on November 15, 2011 because the "state" had until January 26, 71 days later, to make their application. Maybe Gerard was worried about an urgency that my attorney missed. Maybe he knew he was already past his deadline. Although Gerard's November 15, 2011 renewal of the order, referring to Edgerton's note, says the original contact order was "entered on January 26, 2007". Did he *forget* that he issued the original order himself 85 days before that date? Or did he wish others to forget?

The Court of Appeals agrees with me that Judge Gerard's ex-parte extension was unlawful, but does not address whether its unlawfulness made it invalid:

> Holman maintains that she had a right to be heard before the district court modified the no-contact order in 2011 to extend it for five years. Although the form filed by the court stated that Holman had received notice of the

> hearing, the State's motion to extend the no-contact order was filed only hours before the court granted it. It is clear that Holman was not afforded notice before the court took action on the State's motion. Moreover, the requirements to issue a temporary injunction without notice to the party were not fulfilled. See Iowa R. Civ. Pro. 1.1507 (allowing a temporary injunction to be issued without notice where the applicant's attorney certifies in writing either the efforts that have been made to give notice or the reason supporting the claim that notice should not be required); see also Olney, 2014 WL 2884869, at *3 ("A no-contact order is analogous to an injunction."). However, even if the district court erred in the procedure offered to Holman before the 2011 extension, Holman was afforded the opportunity to be heard in 2015 when the court reconsidered the merits of whether she still posed a threat.

Of course, the extension had no legal authority to exist even into 2012, much less into 2015.

Even if both orders were legal, the extension expired 13 days ago – November 2, 2016 – and I have not been notified of another extension. Of course Judge Gerard may have done it again, in a third illegal ex-parte hearing. Or he may again ignore his deadline.

Or, this Court may rule, by logic or law I can't guess, that both the order and extension were valid after all, and will be until next January 26. The very worst outcome for me would be for this

Court to rule this case moot because the order has expired and not been renewed, when in fact it is being renewed but it is too late to add that information to the court record.

If, indeed, the no contact order against me has finally expired, and has not been renewed, then the object of this appeal is only declaratory relief. Which is the more important relief I need anyway even if the order is valid and is renewed, to foreclose future charges against me for my speech which is protected by our Constitution, if not consistently by our judiciary.

> Rule 1.1101 Declaratory judgments permitted. Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in rules 1.1102, 1.1103, and 1.1104, does not limit or restrict the exercise of this general power.
>
> Rule 1.1105 Discretionary. The court may refuse to render a declaratory judgment or decree where it would not, if rendered, terminate the uncertainty or controversy giving rise to the proceeding.

II. Course of Proceedings and Disposition in the District Court

Petitioner/appellant Donna Holman commenced this action by filing her "Motion to Correct (Vacate) Illegal Order" on August 8, 2014, on the ground that the 2011 renewal of the order had been improperly ex-parte. When Judge Gerard declined August 22 on the ground that he saw nothing in the no-contact order laws explicitly granting me the right to defend myself, (never mind the statement on his extension form that he had given me that right), I filed a 1.904 motion September 3 pointing out the obligation spelled out in *State v Olney,* No. 13-1063, 6/24/14 (Ia.Ct.App. 2014) , that if a no contact order is issued in a hearing about which the defendant was not notified, the Court should review the matter later when the defendant has the opportunity to defend herself.

On September 23, Judge Gerard, without conceding any error in ruling ex parte with no attempt to notify me, granted review on the merits of whether I was still "a threat to the safety of the protected party". He wouldn't allow a hearing on the legality of ruling ex parte. He scheduled a hearing for November 7, at which

he did not show up. Another judge, Judge Lewis, also ruling ex parte,[1] continued the hearing to a date which conflicted with my attorney's court calendar. The mounting costs of that kind of harassment pressured my attorney to forfeit my right to a hearing.

Judge Gerard finally ruled July 15, 2015, based on affidavits submitted in January rather than on a hearing, that the no-contact order extension of November 15, 2011 must stand, because I "continue to pose a threat to the safety of the protected party".

It is from that order that I appeal.

The Court of Appeals has affirmed, saying

> Holman had the burden to establish that she no longer posed a threat to the protected parties, but instead she did quite the opposite. The affidavits she filed with the court, rather than assuaging fears about her possible future behavior, indicated that she intended to continue much as she had before, and as she had in other locations since her initial arrest. While Holman continues to maintain that she is simply engaging in her right to protest things that are against her personal beliefs, it is clear she plans to continue to do so in such a way as to harass those that the no contact order is meant to protect. We cannot say the district court erred in its determination that Holman still poses a threat.

1 On November 7, Judge Gerard didn't show. Judge Lewis's order that day, continuing the hearing to January 16, 2015, claimed that Assistant Attorney General Rachel Zimmermann appeared at the hearing. If she did, it was ex parte at some other time or place than was scheduled for our hearing, because no one showed there except me and my attorney.

I filed my Notice of Appeal to this Court August 10, 2015. I filed my first brief November 5. When "the State" did not respond, I filed my brief in its "final" form, with appendix, on my deadline which fell on Christmas Eve, 2015.

On January 7 of this year, Assistant Attorney General Cmelik filed that he wanted to respond in the case after all, and should be allowed to because it was my fault that he filed quite past his deadline. This Court allowed him to. The ensuing round of briefs, including his motion for extension of time, was completed May 16.

On July 18 this Court assigned my case to Judge Danilson of the Court of Appeals. On October 26 he ruled.

As for the pattern of ex-parte hearings, the Court of Appeals has given me the declaratory relief I have asked, so I will ask for no more. I will mention it as part of the factual record, and to illustrate the pattern of lack of due process in my case, but I ask no further relief regarding it. I am hopeful the Court of Appeals ruling will be sufficient to save me from future ex-parte hearings in Judge Gerard's court.

The Court of Appeals ruled that the ex-parte hearing in 2011, extending the 5-year order, was wrong.

The Court minimized the wrong by observing that at least Judge Gerard gave me a hearing in 2015, but the statement that it was wrong is appreciated.

The Court focused on the lack of an in-person hearing in 2015 and observed, as I had myself, that it was my own attorney who waived it. That was not an issue over which I expected relief; I mentioned it only in passing as part of the record that simply "surprised" me. To the extent it was a complaint, my complaint was about events leading up to my attorney's waiver, which seemed to me to pressure him to cut his losses somehow. I never meant it as a stand-alone issue but only as one piece of the general pattern of the damage to justice when abortion enters the court room.

STATEMENT OF THE FACTS

Ideas, like "They are killing babies in there", "Thou shalt not murder", a physical description of the aborticide process, "the babies didn't ask to die", "You're a mom – don't kill your baby", are

the heart of the complaint against me issued November 6, 2006, alleging 3rd Degree Harassment, Iowa 708.7(1)(b), of Planned Parenthood staff and customers, and Disorderly Conduct, Iowa 723.4(2).

Below are the worst statements attributed to me in the record that made people uncomfortable over the years. The allegations from anonymous complainants should not be considered proved, since I was not allowed to cross examine them. Also there was no verbatim court record, but only the judge's personal trial notes.

"You are a murderer" are among the words put in my mouth. I never told anyone that, partly because I am not sure if the people I am talking to are going in for an abortion, although their faces show a lot.

Although when I quote God saying "Thou Shalt Not Murder", it is easy to see how people might personalize that who *are* about to kill their own baby. But I don't. Perhaps others with me said that, but I didn't.

We were not allowed to cross examine the witnesses who

were kept anonymous, in order to correct the record. But our videotape is in the record. Although it is not continuous from beginning to end but was occasionally turned off when nothing was happening, if you watch it you will not hear me calling anyone a murderer.

But even if every alleged word were what I said, notice the absence of any expressed wish for harm upon any person, physically, financially, socially, intellectually, psychologically, spiritually, or at any other level, much less of any expression of *intent to cause* any such harm. My words are clearly designed only to inform, to plead, and to save lives.

> Continued to scream loudly...patients being harassed [verbally, presumably] *(Voluntary statement of Shirley Morris to police, November 1, 2006)*
>
> The elderly lady met me at the car and followed me and stayed by my side while I was outside....She told me not to go in that they were killing babies in there. She said how the aborticide worked and tried to get me to take pamphlets from her. She said 'Thou shalt not murder' and that my baby wanted to live. She kept talking and when I got inside she continued yelling. My friend asked her several times to go away and that she did not know why we were here but the lady said she knows what they do in there. (*Voluntary statement to police, name redacted, November 1, 2006)*

The second we stepped out of the car, an older woman started to **verbally** attack us. “They kill babies in there! They take their arms and legs and grind them! You’re a murderer! They didn’t ask to die! etc...”...The woman continued to scream once we were inside. (*Voluntary statement, name redacted, November 1, 2006)*

Patients were agitated to get in, banging on the door. Protester was yelling stating patient was “a murderer”. Patient was very upset and crying. I really didn’t pay attention to what protesters were saying for I feared for the safety of all of us at the door. All I remember was “murderer”. (*Voluntary statement of Justine Sansa, Planned Parenthood staffer, November 1, 2006*)

Around 7:50 am a patient was at our door waiting to come in – myself and co-worker went to unlock the door and could hear a female protester yelling at the patient and friend “thou shalt not murder” “you’re killing your baby” “You’re a mom – don’t kill your baby”. As I let the patient in they continued to yell at the patient where the staff and others in the clinic could hear. (*Voluntary statement of Tracy Goetz, Planned Parenthood staff, November 1, 2006*)

Harassment 3rd Degree – personal contact in violation of 708.7(1)(b)...engage in personal and physical contact with another with the intent to alarm and annoy the other....The defendant approached the victims and began following them as they walked to the door. As she followed she yelled at them and shoved pamphlets at them. They told her multiple times to leave them alone and she continued to yell and push the pamphlets at them. The victims advised they were alarmed and annoyed by the defendant’s actions. (*Complaint, November 1, 2006.* App. 3)

Below are additional accusations of the "alarm" I raised, and the efforts to keep patients "safe" from my...my what? Not "safe" from any physical danger; but **"safe" from the content of my message.** And what is the method for keeping patients "safe"? Umbrellas? To help fight me off should I suddenly morph into some manner of credible physical threat for which no evidence was alleged or theory proposed?

> Could hear loud yelling – horrible things – at the two girls....Observed that Donna was even closer to the two girls, approximately an arm's length away....both girls were very upset. They both appeared very nervous, very scared, shaking. The patient was crying... "Why are they doing this to us?"...the billboard had a gruesome picture. [Staff went out front to] watch for other patients coming in-wanted them to be safe. Walked people out to their cars and escorted them in. Could still hear the Defendant yelling, "Thou shalt not murder!"....The Defendant's tone was very serious and it would make your skin crawl. Very upsetting to hear it – horrifying – very loud – very direct – very uncomfortable....It was very scary inside the clinic....**Defendant would look at people directly in their eyes** – yelling directly at them – approaching them in a direct manner but maintaining a slight distance. The two girls were very frightened by the Defendant's behavior....Police made sure that everyone was OK-safe and would handle the situation....Witness did not like what Donna was saying....Did not see Donna physically touching people...." "Thou shall not murder!" "You are a mom. You are killing your baby!" **Witness does not agree with that**

> **statement**....When security there in the past – [Donna] has been allowed to talk to patients. That day she was yelling at patients....They appeared to be absolutely threatened. Witness felt threatened....At one point, the shouting was directed toward the witness. (The Planned Parenthood director.) Witness felt that it was very intimidating to her. ...Defendant shouting personally at her, "Shirley Morris, you are going to hell!" Made the hair on the back of her neck stand up. Very intimidating to have someone call her by her name. It rattled her, even at her age and her experiences. Cannot imagine what it must have been like for those two girls. Defendant was probably three feet from her. (From judge's notes on the January 26, 2007 trial, filed January 31. App. 5-7)

Well OK, someone used the word "intimidate". But our videotape of the incident was entered into evidence. You will not find me calling Shirley Morris by name, because I did not know her name, or that she worked at Planned Parenthood, much less that she was its director. Neither will you hear me telling anyone they will go to Hell. I don't know if they will. I pray they won't. It is largely to save them from Hell that I minister.

The video evidence in the record shows that I did not harass the Jane Doe listed in the complaint. I merely spoke to her and offered her a brochure. The evidence shows that she lied in her complaint. She did not tell me several times to "go away." I did not

"verbally attack" her as she alleges in her statement. I did not scream as she and other witnesses allege. Videos do not lie.

Judge Gerard issued a no-contact order November 2, 2006, ex-parte, the day after the two complaints against me were written. In violation of Iowa law which only allows such an order to stand for 10 days without an opportunity for the defendant to defend herself,[2] Gerard made the order permanent without granting me any such opportunity.

It was not even filed for five days. I did not even receive notice of its existence until 13 days after it was issued, after I had been in jail a day for violating it.

At the trial January 26, 2007 I was found guilty and the no-contact order was extended for five years from that date, instead of from the date it was issued, in violation of Iowa Code 664A.8.[3]

2 Rule 1.1509 limits the reach of ex parte injunctions to 10 days, giving the excluded party the right afterward to quickly cure the exclusion with a proper hearing. The "comment" on amendments to Rules 1.1505, 1.1506, 1.1507, and 1.1509 states: "Concern has been raised regarding the issuance of temporary injunctions without a hearing or notice to the adverse party, and the subsequent difficulty in scheduling a hearing to dissolve, vacate or modify the injunction. The amendment to rule 1.1507 puts the burden upon the applicant to certify that he or she has either made an attempt to provide notice or has legitimate reasons for not providing notice. The amendment to rule 1.1509 provides once the temporary injunction has been issued, the adverse party may then file a motion to dissolve, vacate or modify the injunction, which shall be heard within ten days...." Iowa Court Rules 4th Edition, June 2009 Supplement

3 664A.8 Extension of no-contact order. "Upon the filing of an application by the state...which is filed within ninety days prior to the expiration of a modified no-contact order, the court shall modify and extend the no-contact order for an additional period of five years...

In addition to the no contact order I was fined and ordered to get a psychiatric evaluation in lieu of jail. I got a bona fide psychiatric evaluation from a legally qualified therapist[4], but Judge Edgerton sent me to jail anyway because the therapist was not in Iowa – a requirement she added only after I got the evaluation; she also erroneously said the evaluation was merely "psychological".[5]

It is "cruel and unusual punishment" under the 8th Amendment to the U.S. Constitution to require a grandmother to get a psychiatric evaluation *and treatment* because she is opposed to baby murder and speaks against it.

On November 16, 2011, the Johnson County Attorney filed a Motion to Extend this No Contact Order, and on the same day, judge Stephen Gerard II granted this motion, ex-parte again, on "Form 4.14", which includes the statement, "Defendant has been provided with reasonable notice and opportunity to be heard." (App. 16) The Court of Appeals accepts my statement that I

4 Heather H. Freyone Mechanic, Ed.D., was a "Licensed Marriage, Family Therapist, CA #31905, and a Registered and Certified Clinical Nurse Specialist, #441" according to her report in the record.

5 Psychology.wikia.com says a "psychiatric evaluation" can involve "psychologists", "nurses", and "therapists". http://psychology.wikia.com/wiki/Psychiatric_evaluation Heather was a nurse and a therapist.

received no notice of any kind whatsoever, of any opportunity to "be heard". Which, again, violates Iowa law, raising the question whether it was ever legally binding, although there is no question that it was enforced as if it were.

My crime: I was a sidewalk counselor at Planned Parenthood in Iowa City. I said "God commands: Thou Shalt Not Murder." Planned Parenthood thought I said it too loud. I said it so loud, that they could hear it. They charged me with Harassment and Disorderly Conduct, $250 fine for each count. At my trial the accusers who didn't show up got to testify anyway.

In 2014 I had an attorney, William Monroe. He told me that he was always proud of his profession, but when he saw what they did to me in Iowa City, he was ashamed.

I was banned from Planned Parenthood. They took away all my free speech to be a sidewalk counselor, for 10 years. The police arrested me and put me in jail. They should have put the abortionist in jail instead.

ARGUMENT

1. The Court of Appeals erred in ruling that the elements of the harassment charge against me were "not before the court".

The Court of Appeals made an error of ethics and law (*Canon of Judicial Ethics* and Rule 52.10(1)(b)) when it ruled, without any explanation, that only the charge against me was "before the court", while my defense, that none of the elements of the charge were met, was not!

I don't understand how the elements of a crime can be "not before the court" while the crime is. I don't understand how a Court can rule that my actions meet the elements of the crime, without considering a defense that they most clearly do not. I don't understand how a *charge* can come before a court, without bringing the *defense* before the court. That sounds like a Martin Luther movie where he was not allowed to say even one word in his defense at the Diet of Worms, but was only permitted two words: "I recant".

The words I said do not meet the elements of 3rd Degree

Harassment. Not even the words I was *alleged* to have said meet those elements. They threaten no one's "safety".

> A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to **threaten, intimidate, or alarm** that other person. Iowa 708.7(1)(b)
>
> [It is "harassment in the third degree" if there is no threat to commit a forcible felony or threat of bodily harm.]

"...intent to threaten, intimidate, or alarm..."

The second phrase in the original Complaint (App. 3) lists "annoy" as one of the elements of *Iowa Code* 708.7(1)(b). If it were, almost everybody would be in jail, considering the subjectivity of the word. "Physical contact" is an optional element, but no testimony alleges any physical contact. The fact that I was charged with 3rd degree harassment and not 1st or 2nd degree, "threat to commit a forcible felony" and "threat to commit bodily injury", **proves that no one thought I was about to *physically* hurt anybody.**

Element One: THREATEN. Several say they "felt threatened", but no one said I threatened anybody *physically,* a fact affirmed, I say again, by the charge of *3rd* degree harassment.

In support of his finding Judge Gerard cited a "criminal

history" that fails to suggest that the "threat" he means is remotely physical.

(When I say "physical", I mean pertaining to anything in this physical universe, as opposed to metaphysical or "spiritual". My point, in other words, is that Gerard's "history" cites no "threat" of bodily injury, or of financial loss, or social harm, or any other kind of harm that humans can cause or over which courts have jurisdiction.)

> "[she has] no intention of stopping her activities as an anti-[aborticide] protester...**to communicate to women why they should not kill their children**....[and she wants to] speak to those who wish to enter [Planned Parenthood; she was] convicted of criminal trespass....[and **in the view** of Planned Parenthood staff she] **display hostility** against Planned Parenthood...." (App. 88 – ruling begins p. 86)

Spiritual "threats" not prosecutable. Is a "threat" prosecutable, which is not alleged to be physical but appears to be at most intellectual or spiritual? And where the truthfulness of the words alleged to be "threatening" has never been challenged or said to depend on words or actions of the defendant?

There was a disconnect between me and Judge Gerard

through all this. In his mind the spiritual challenge Americans call "Truth" "threatens" Planned Parenthood. In fact, Truth "threatens" all tyranny, and all lies.

But Truth's intellectual and spiritual threats, unlike physical threats, are not only not prosecutable, they are protected as among the most fundamental of rights by the First Amendment, and are universally held as central to the Freedoms which distinguish and preserve our nation. Judge Gerard, apparently not noticing this distinction, wrote down that I – and the content of my speech – am a "threat" to people.

The "State's" motion to extend the no contact order, filed November 16, 2011, claims "The State believes Defendant continues to pose a threat to the victim's safety." I challenge Naeda Erickson to find even *one* person in this great state, including himself, (or herself?) *or any judge*, who seriously believes I have ever "pose[d] a threat to the...[physical] safety" of anyone!

That is, unless the "safety" of the "victim" in the mind of the "state" and of the judge is not physical, but is the "victim's"

spiritual "safety". But if that is their concern, why don't they acknowledge that my warnings cannot put people in *greater* danger, but the opposite: if heeded they will completely *spare* them from *any* danger?

American courts have no jurisdiction over spiritual "threats".

Throughout American law, the kind of threats which are criminalized are universally understood to be *physical* threats.

> Threat: In criminal law. A [physical] menace; a declaration of one's purpose or intention to work [physical] injury to the person, property, or rights of another. A threat has been defined to be any [physical] menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free, voluntary action which alone constitutes consent. Abbott. See *State v. Cushing*. 17 Wash. 544. 50 Pac. 512; *State v. Brownlee*, 84 Iowa, 473, 51 N. W. 25; *Cote v. Murphy*, 159 Pa. 420, 28 Atl. 190, 23 L. R. A. 135, 39 Am. St. Rep. 6S6. (*Online Black's Law Dictionary* 2nd Edition.)

Black's Law Dictionary doesn't *say* only a *physical* threat is prosecutable, because it shouldn't need to. It should go without saying. Everybody already knows it. If perceived *spiritual* warnings were prosecutable our First Amendment would mean nothing.

The fact that all these years of actions against me are based

on a finding that I threaten all these people, even though no one describes the threat as physical but rather in intellectual and spiritual terms, is clear in Judge Gerard's rulings against me November 2006, January 2007, November 2011, and April 2015.

Widely believed statements about this life and the next, which no one has alleged to be untrue, and which would be just as true if I had never been born, are erroneously called "threats" and prosecuted as such. That constitutes "abuse of discretion".

> "Abuse of discretion - Court's exercise of its discretion in deciding a motion rests on plainly untenable grounds or its abuse of discretion is clearly unreasonable." *State v. Powell*, 684 N.W.2d 235 (Iowa 2004).

Even if every word of Judge Gerard's description of my "threats" were true, they do not on their face describe the kind of physical threat which is prosecutable under American law. If intellectual and spiritual threats are now prosecutable, Freedom in America has a serious problem.

It should go without saying that a prosecutable "threat", in America, must be a physical threat or it must be left alone by courts.

Element two: INTIMIDATE. Did I “intimidate” anyone? Only one person used that word, but more about that later. I don’t think I look very intimidating when I look in the mirror. Maybe if I were a young 6’ athlete wearing body piercings and gang colors I might intimidate people just by talking to them, or my disapproval might intimidate them if I were in a position of authority over them. With neither of those I don’t think “intimidated” would be the right word for what anyone felt because of me. People pretty generally had contempt for me. I doubt if anyone can be “intimidated” by someone they have contempt for, who poses no tangible threat.

Element three: ALARM. That leaves “alarm”.

This element may qualify as being Constitutionally Vague, in that it certainly can’t be prosecutable when it merely informs people of facts which are true and which would still be true even if the messenger did not exist. The following trial notes reveal that even when no “protesters” (we call ourselves “sidewalk counselors” and “missionaries to the preborn”) are present, patients are sufficiently disturbed by “the nature of the business” that it is

necessary for abortionist staff to "console" patients:

> Defendant questions witness [who works for Planned Parenthood] on whether the nature of the business can be traumatic for patients. Witness comes into contact with patients. Talks to patients. Some people can be stressed. [Even with no protesters outside.] There are times when witness will console patients. (Judge's notes on the January 26, 2007 trial, filed January 31. App. 7 – transcript begins p. 5)

In American justice, evidence that I told the truth *has* to be a defense against the charge that I alarmed somebody. Before this charge can legitimately, legally, and constitutionally stand, there has to be an allegation that what I said is not true, or that it would be made true only by my present or future actions. Then I would have to be allowed to present evidence that what I said was already true, and it has to be the burden on the State to prove I raised a False Alarm – the only kind of alarm which can be prosecutable.

If my message was already true before I said it, then its recipients' strong negative emotional reaction to mere truth marks them as immature, and probably as fools, although the latter charge might be too strong since their ignorance is at least intentional. But when millions are willfully ignorant about whether

they are committing murder, America faces a very serious, very grave spiritual problem.

No Court can, therefore, logically or legally rule on such a case, without addressing whether the "alarm" raised was false, or true. When an "alarm" is true, the correct word is "warning". No law criminalizes giving a "warning", and the perversion of any law to such a result would constitute an unconstitutional, as well as irrational and outrageous, application.

My evidence that the substance of my message that unborn babies are humans/persons – which was prosecuted as "3rd degree harassment" – has been true independently of myself, and is legally recognizable as true, is laid out in my October 21, 2014 brief. I can't imagine how anyone can possibly refute it. However, I will be most interested in the attempt of any legally trained person.

Even if I *had* told people "you are a murderer", (two witnesses said I did: one, anonymous so we couldn't question her or jog her memory, and a Planned Parenthood staffer whose testimony must be presumed to be biased) that threatens no one's safety.

Perhaps "Thou Shalt Not Murder" and "you *are* a murderer" are too much alike for this Court to see significance in the difference. To one who believes unborn babies are *not* humans, saying "Thou Shalt Not Murder" to someone about to kill a baby must seem close enough to saying "you *will be* a murderer *if* you kill your baby" that the tense correction and the conditional "if" will seem too small for notice. (Although as my October 21, 2014 brief details, no court-recognized finder of fact has so far positively asserted that unborn babies of humans are *not* humans.)

Calling someone a murderer, who is not, would certainly be prosecutable as libel. But evidence that a statement is true is an absolute defense against the charge that it is libel. So that charge would put the burden on the prosecutor in my case to prove either that (1) abortion isn't murder, or (2) the person I supposedly accused wasn't going in for an abortion.

This appeal calls upon this Court to recognize evidence that a statement is true as an absolute defense, also, against the charge that it is a threat, when the statement is true independently of the

existence of the person stating it.

2. The Court of Appeals erred as a matter of constitutional law when it ruled that religious and factual statements never alleged to be untrue constitute prosecutable criminal "threats".

The Court of Appeals erred in ruling that the truthfulness of my statements was "not before the court".

The Court of Appeals erred in saying the restrictions on my freedom to state widely believed truths about spiritual and factual matters was "not before the court".

Content-based restrictions. When speech is prosecuted as "threats to safety" which are not even alleged to threaten anyone's *physical* safety but which only articulate *beliefs* shared by about half of society and hated by the other half, the prosecution is called an unconstitutional "content-based restriction" which regulates speech according to its subject matter or viewpoint.

Not even prosecution of threats against the life of the President are permitted, unless they are "true threats", and not mere "political hyperbole". *Watts v. United States,* 394 U.S. 705,

708 (1969). See also *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982); *Planned Parenthood v. American Coalition of Life Activists*, 290 F.3d 1058 (9th Cir. 2002) (en banc), cert. denied, 539 U.S. 958 (2003) (the "Nuremberg Files" case); *Virginia v. Black*, 538 U.S. 343, 360 (2003) ("Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of **bodily** harm or **death**.").

Even "advocacy of the use of force or of law violation" is protected unless "such advocacy is directed to inciting or producing *imminent* lawless action and is *likely to incite or produce* such action." *Brandenburg v. Ohio,* 395 U.S. 444, 447 (1969). See also *Stewart v. McCoy,* 537 U.S. 993 (2002) (Justice Stevens' statement accompanying denial of certiorari).

Content-based restrictions of speech other than advocacy or threats are presumptively invalid. *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382 (1992) They must pass "strict scrutiny"; they must be necessary "to promote a compelling interest," and they must be

"the least restrictive means to further the articulated interest." *Sable Comms. of Cal., Inc. v. Federal Comms. Comm'n*, 492 U.S. 115, 126 (1989) ("The Government may . . . regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest.")

"Fighting words" "which by their very utterance inflict injury or tend to incite an immediate breach of the peace" are prosecutable; ie. "epithets or personal abuse" that *"are no essential part of any exposition of ideas"*. *Chaplinsky v. New Hampshire,* 315 U.S. 568, 572 (1942). No one has alleged either that my words have incited physical violence, or are ever likely to, or that my words are not essential to expressing my ideas.

Judge Gerard ruled July 14, 2015 that my

> "criminal history clearly proves that the Defendant continues to present a threat to the safety of the Protected Party in this case, the Planned Parenthood Clinic in Iowa City, Iowa." (App. 88 -document begins p. 86)

But nothing in what he cited from the record supported any scenario of danger I posed to the *physical* safety of anyone at

Planned Parenthood, much less to Planned Parenthood itself.

It is my motivating ideology – my opinion – my Biblical perspective – that the "rationale" of the Court's no-contact order targets.

> "A content-based speech restriction is one that regulates 'speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.'" *Galena v. Leone,* 638 F.3d 186, 199 (3d Cir. 2011)

The purpose of the no contact order is to

> "suppress, disadvantage, or impose differential burdens upon speech because of its content." *Turner Broad. Sys. v. Federal Comms. Comm'n*, 512 U.S. 622, 642 (1994)
> "The question in every case is whether the words used . . . create a clear and present danger. . . ." *Schenck v. United States*, 249 U.S. 47, 52 (1919)

Schenck is not talking about a spiritual danger, or an intellectual danger, or a psychological danger, but a *physical* danger.

Although it is written in my case that my message threatens the "safety" of people, no one seriously imagines anyone becomes physically unsafe when I get closer than 25 feet from them. Such statements should be recognized as absurd.

As for the charge of **disorderly conduct**, an element of 723.4(2)

is “raucus”, which means “behaving in a very rough and noisy way...strident...hoarse...harsh...raucus laughter...a raucus crowd”[6]. I doubt if that is an appropriate word for a focused, non-physical message with which many agree, delivered with no more volume needed than to bridge the distances involved. Another element is occurrence outside a “public building” which means “a building that belongs to a town or state, and is used by the public”.[7] Planned Parenthood is not owned by any government.

EVIDENCE THAT MY STATEMENTS WERE TRUE. The legal recognizability of abortion as murder is “before the court” through more than one “door”.

First, because a legitimate defense against the charge that I threatened, intimidated, or alarmed anybody is evidence that what I said was true, independently of my own existence.

3. The Court of Appeals erred in letting stand the “protected party” status of a business legally recognizable as criminal, in order

6 Merriam-Webster.com. http://www.merriam-webster.com/dictionary/raucous

7 Collins Dictionary, http://www.collinsdictionary.com/dictionary/english/public-building. Also see https://en.wikipedia.org/wiki/Public_Buildings_Act “The Public Buildings Act of 1926, also known as the Elliot-Fernald Act, was a statute which governed the construction of federal buildings throughout the United States....” The U.S. Code defines “public building” as “suitable for use...by one or more federal agencies....” 12 categories are listed of federally owned facilities. Privately owned buildings are not on the list. 40 USCS § 3301 (5)

to protect that criminal activity from warnings about it to its victims.

Second, because Judge Gerard ruled that Planned Parenthood is the "protected party", but an entity whose primary activity is legally recognizable as murder cannot be a "protected party" which is protected from true information being transmitted to its victims.

That was the subject of my October 21, 2014 brief. (App. 27) With the issue shifted by Judge Gerard to whether I am such a Superwoman that at the age of 80 I still "threaten the safety", of people performing a particular activity, so seriously that they require court protection, it became relevant to submit evidence that the activity they are performing is now legally recognizable as "murder"; because the safety of murderers, while they are murdering, is not legally protectable.

When a plaintiff in a lawsuit is partly responsible for the turbulence the suit seeks to remedy, the plaintiff does not have the "clean hands" necessary to have standing to sue. The business of killing legally recognizable human beings without necessity or due

process makes the plaintiff the *cause* of all efforts to save those lives – efforts which, so long as they fall short of "serious injury", are made legal by Iowa 704.10.

My brief began "Planned Parenthood is not entitled to legal protection from me, and therefore has no standing to participate in the hearing set by Judge Gerard's September 23 [2014] order."

Has the unanimous verdict of all four court-recognized finders of facts – juries, expert witnesses, state legislatures, and Congress (in 2004) – that all unborn babies are humans/persons from fertilization, finally invoked *Roe v. Wade's* finding that the establishment of this fact requires states to protect the unborn, leaving Planned Parenthood without the "clean hands" needed to have standing to sue for interference with its killings?

If that much consensus of fact finders is insufficient to establish a fact, can any fact ever be established?

As my arguments document, the aborticide which is the principal business of the Protected Party [Planned Parenthood] has been legally recognizable as murder since at least 2004 when the

final category of court-recognized Finders of Facts made it unanimous that all preborn babies are humans/persons from "conception" [by which they all meant fertilization, although some doctors have since redefined "conception" to mean "implantation"], and murderers are not legally entitled to protection while they are murdering, nor do they have standing in an equitable action to apply for protection.

My arguments find no fault with *Roe v. Wade,* or with any U.S. Supreme Court decision, but rather explain how the consensus of state supreme courts, on these issues, including *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637 (1991), has been superseded by the subsequent consensus of court-recognized finders of facts which has triggered a key ruling of *Roe*. Here is a summary of my argument which I treat exhaustively in my October 21, 2014 brief:

Roe v. Wade says what must be established for legal aborticide to end, and for state courts to defend the lives of preborn babies:

> **"If** this suggestion of **personhood [of preborn babies] is established,** the...case [for legalizing aborticide], of course,

> collapses, for the **fetus' right to life is then guaranteed** specifically by the [14th] Amendment." *Roe v. Wade,* 410 US 113, 156

Here is where federal law in 2004 "establishes" it, legally recognizing the preborn as humans.

> 18 USC§1841(d) ...the term **"preborn child"** means a child in utero, and the term "child in utero" or "child, who is in utero" **means a member of the species homo sapiens, at any stage of development,** who is carried in the womb.

Next is where *Roe* equates "recognizably human" with 14th Amendment "persons". This disposes of any legalistic claim that federal law doesn't meet Roe's requirement because it uses a different word – as if some "humans" are not "persons".

> These disciplines variously approached the question [of when life begins] in terms of the point at which the embryo or fetus became "formed" or **recognizably human, or in terms of when a 'person' came into being,** that is, infused with a 'soul'... *Roe v. Wade* 410 U.S. 113, 133 (1973)

Iowa law 704.10 says my actions can't be prosecuted as a "public offense" if their intent was to prevent "serious injury" to babies who have been legally recognizable as persons and as humans since at least 2004. I can't even be prosecuted for violating the letter of criminal laws, by actions which prevent *mere serious*

injury. Much less can I be prosecuted for actions which were never alleged to violate any statute, requiring a Court of Equity to identify any wrong, and which have in fact saved lives – a fact never disputed, and affirmed by the prosecution of me for interfering with those killings. (That is, had we not driven away a single killing customer, it is hard to imagine why Planned Parenthood would spend such resources on prosecuting me.)

> *Iowa Code* 704.10 Compulsion. No act, other than an act by which one intentionally or recklessly causes physical injury to another, **is a public offense** if the person so acting is **compelled** to do so by another's threat or menace of **serious injury,** provided that the person reasonably believes that such injury is imminent and can be averted only by the person doing such act.

There is nothing in the U.S. Constitution which permits parents to murder their children.

> ...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." - 14th Amendment to the U.S. Constitution
>
> "...no person shall be deprived of LIFE, liberty, or property, without due process of law." - Iowa Constitution, Section 9

The principal activity of the Protected Party can't legally be

protected since it became legally recognizable as murder. My October 21, 2014 brief presents this argument. I ask that it be finally addressed and responded to. I ask that it be *squarely* addressed.

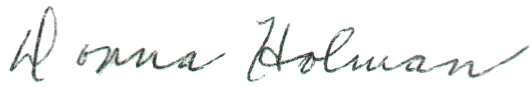
Conclusion: The Supreme Court should grant further review in this matter, and, upon such review, address my defenses which the Court of Appeals erroneously said were "not before the court", and reverse the decision of the district court granting the no-contact order. My defenses *were* before that Court, and now are before this Court: I ask this Court to address them.

I ask for reversal of the Johnson County injunction against me, if it still exists, and declaratory relief that will prevent future unconstitutional restrictions on my constitutionally protected speech. Specifically I ask for the freedom from Iowa prosecution to make spiritual and factual statements widely accepted as true independently of my own existence. I ask that the definition of "harassment" and "threats" be clarified to never apply in any court to true statements, and I ask affirmation of the truth that all

unborn babies of humans are legally recognizable as humans/persons, which makes aborticide/abortion legally recognizable as murder.

I ask your ruling clarifying that "threats" and "harassment" are not prosecutable if they involve only mental and spiritual allegations whose truth no one contests and which a majority of Americans believe, and which do not involve any physical danger.

I ask, and pray, that you will speedily and *squarely* address these arguments.



_____

Donna Holman, pro se
776 Eicher, Keokuk IA 52632
319-524-5587, Truthvan@yahoo.com

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Iowa R. App. P.6.903(1)(g)(1) or (2) because:

[x] this brief contains 8,686 words, excluding the parts of the brief exempted by Iowa R. App,. P. 6.903(1)(g)(1)

2. This brief complies with the typeface requirements of Iowa R. App.P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P.6.903(1)(f) because:

[x] this brief has been prepared in a proportionally spaced typeface using OpenOffice 4.1.1 in 14 pt. CentSchbook BT.

Donna Holman

_____ ____November 15, 2016_____

Signature Date

Certificate of Service

A copy of this brief was transmitted to the Iowa Attorney General by efiling it with the Iowa Supreme Court, pursuant to 16.317(1)(a)(2), on November 15, 2016.

Donna Holman

_____ ____November 15, 2016_____

Signature Date